

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SUZANNE FIORE,

Plaintiff,

- against -

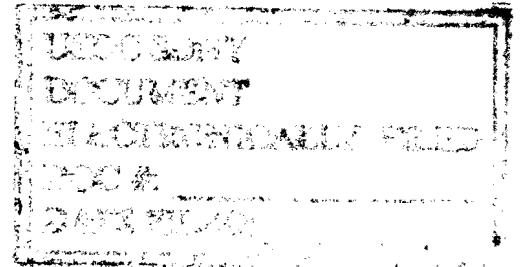
ANDREW PINTO, MARGARET BELLOS,
JOHN D. CAVALLARO, JOHN COSTANZO,
THE VILLAGE OF TUCKAHOE and JOHN DOES
#1-50,

Defendants.
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TO THE HON. UNITED STATES DISTRICT JUDGE:

**REPORT AND
RECOMMENDATION**

09 Civ. 2465 (SRL) (GAY)



On or about March 18, 2009, plaintiff Suzanne Fiore filed a complaint alleging that the defendants violated her constitutional rights because they, *inter alia*, falsely arrested plaintiff and retaliated against her because of her speech. On or about April 3, 2009, the case was referred to the undersigned for All Matters. On June 18, 2010, because the plaintiff failed to serve her complaint upon the defendants, I issued an Order to Show Cause (Docket #6) giving the plaintiff until July 19, 2010 to respond to the pending issue of why she had not yet effected timely and proper service upon the defendants. The court received no response from the plaintiff and, as of the date of this Report and Recommendation, the civil docket sheet maintained in this matter indicates that service upon the defendants still has not been accomplished.

Federal Rule of Civil Procedure 4(m) states, in relevant part:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to plaintiff—must dismiss the action without prejudice against that defendant or order that service be

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made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). Here, in accordance with the plain language of Rule 4(m), the Court's Order to Show Cause provided the required notice and opportunity to plaintiff to effect service upon the defendants. See Thompson v. Maldonado, 309 F.3d 107, 110 (2d Cir. 2002). Specifically, the undersigned instructed plaintiff to show cause by July 19, 2010 as to why her complaint should not be dismissed pursuant to Rule 4(m). Plaintiff failed to respond and show good cause for her failure to timely serve defendants. Moreover, plaintiff has had no contact with this Court since she filed her complaint in March of 2009. Accordingly, I conclude, and respectfully recommend, that the plaintiff's complaint should be dismissed without prejudice.

NOTICE

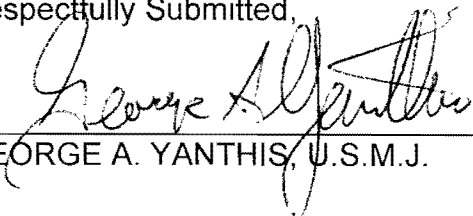
Pursuant to 28 U.S.C. § 636(b)(1)(B), as amended, and Rule 72(b), Fed. R. Civ. P., the parties shall have fourteen (14) days from receipt of this Report to serve and file written objections to this Report and Recommendation. If copies of this Report are served upon the parties by mail, the parties shall have seventeen (17) days from receipt of this Report to file and serve written objections. See Fed. R. Civ. P. 6(d). Such objections, if any, shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of The Honorable District Court Judge at the United States District Court, Southern District of New York, 300 Quarropas Street, White Plains, New York, 10601, and to the chambers of the undersigned at said Courthouse.

Failure to file timely objections to this Report and Recommendation will preclude later appellate review of any order of judgment that will be entered. See Caidor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008).

Requests for extensions of time to file objections must be made to the Honorable District Court Judge and not to the undersigned.

Dated: September 27, 2010
White Plains, New York

Respectfully Submitted,



GEORGE A. YANTHIS, U.S.M.J.